PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Robert L. Cadoux

Application No.: 09/491,388 Group Art Unit: 3624
Filed: January 26, 2000 Examiner: Pwu

For: A SERIALLY STAGED, INITIAL PUBLIC STOCK OFFERING METHOD

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Cadoux, Robert	)		
		)	**Examiner:**	Pwu, J.
Serial No.:	09/491,388	)		
		)	**Art Unit:**	3624
Filing Date:	Jan. 26, 2000	)		

Title: A SERIALLY STAGED, INITIAL PUBLIC STOCK OFFERING METHOD

APPLICANT'S APPEAL BRIEF

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Applicant for the above-identified patent application submits this brief in accordance with the provisions of 37 C.F.R. §§ 1.191-1.192 in response to the Office Action dated January 27, 2004, and pursuant to the Notice of Appeal filed April 13, 2004.

I. Real Party In Interest

The real party in interest is the applicant, Robert Cadoux.

II. Related Appeals and Interferences

Applicant is not aware of any appeals or interferences that will directly affect or be directly affected by or have a bearing on the decision of the Board of Patent Appeals and Interferences ("Board") in the present case.

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III. Status of the Claims

In the final Office Action mailed January 27, 2004 (hereinafter "the Office Action"), claims 1-26 of the present application were rejected as being obvious under 35 U.S.C. § 103(a) over Macklin et al., "Going Public and the NASDAQ Market," The NASDAQ Handbook, 1992 Ed., Chap. 7 (hereinafter "Macklin") in view of Logue, "Handbook of Modern Finance," 1995 Ed. (hereinafter "Logue"). Subsequently, on April 13, 2004, Applicant filed a Notice of Appeal, appealing the rejection of claims 1-26. Thus, each of claims 1-26 stands rejected and subject to this appeal. The text of claims 1-26 is set forth in the Appendix hereto.

IV. Status of Amendments

Applicant filed the Notice of Appeal on April 13, 2004, and there was no amendment filed by the Applicant after the Office Action dated January 27, 2004. Thus, the pending claims are the same as those presented in Applicant's response of October 13, 2003, and as set forth in the Appendix.

V. Summary of the Invention

A. Background

Privately held companies typically launch a public stock offering, called an "initial public offering" (or "IPO"), to raise needed capital to expand their businesses. Traditionally, the company mounting the IPO sets an initial price (the "IPO price) at which the stock will be offered to the public. The IPO price is typically established by an investment banker based on a variety of factors. Oftentimes, however, the price at which the shares trade on the open market after the initial offering greatly exceeds the IPO price. The offering company, however, does not

realize the additional capital associated with the enhanced share price of its stock. Rather, the capital raised by the offering company is limited to the number of shares offered at the IPO price (less the underwriter discount) during the subscription stage of the offering. The difference between the aggregate value of the shares after the IPO and the capital raised by the offering company is commonly referred to as "money left on the table", because it represents additional money the company could have raised if the IPO price had better reflected the market demand for the stock.

In some instances, such as with some of the Internet-related IPOs of the late 1990's, the amount of money left on the table, and hence unavailable to the treasury of the offering company, can be staggering. For example, on December 10, 1999, FreeMarkets.com offered 3.6 million shares (or 10.6 %) of its stock to the public in an IPO at an offering price of $48/share. Through the offering, FreeMarkets.com raised $173 million in capital. However, during the first day of trading, the share price for the stock soared from the IPO price (i.e., $48) to $280. If the company and the IPO underwriter had better anticipated the public demand for the company's stock, the company could have instead raised $1.008 billion. Consequently, the company effectively left $835 million on the table.

In view of the market demand for their stock, companies who have left a great amount of money on the table may launch a secondary offering to raise additional capital. A secondary offering, however, is not an initial offering in which a market for the stock is created. Rather, the share price for a secondary offering is contingent upon prior trading. In addition, the secondary offering may dilute the value of the initially offered stock, thus decreasing the value of the stock held by company shareholders who acquired shares during the initial offering.

B. Summary of the Invention

The present invention presents a solution to this dilemma. According to embodiments of the present invention, the shares offered by the issuing company as part of the IPO are issued in a number (two or more) of serial stages. A first portion is offered by the company in the first stage. Then, after a "predetermined and predisclosed" trading interval, the second stage commences, wherein the company issues a second portion of the shares to be offered as part of the IPO, and so on. The trading interval may be, for example, a number of hours, a number of days, etc. (limited, however, by regulatory constraints which may require the company to issue a revised offering prospectus if the trading interval is too long).

The offering price of the shares offered by the company in the second stage may not be the same as the offering price for the shares in the first stage. For example, the offering price for the second stage may be equal to the closing price at the end of the trading interval between the first and second stages. In that way, the amount of money left on the table by the issuing company may be reduced. For example, suppose an issuing company plans to issue 10,000,000 shares of its stock to the public in an IPO. With the present invention, it could, for example, issue 5,000,000 in the first stage and issue 5, 000,000 in the second stage one day later. If the offering price for the first stage was $10 and the closing price at the end of the first day was $20, the issuing company would collect $150,000,000 in total proceeds from the two offering stages (computed as $10/share times 5,000,000 shares for Stage 1 and $20/share times 5,000,000 shares for Stage 2). In contrast, using conventional IPO structures, the issuing company would only collect $100,000,000 (computed as $10/share times 10,000,000 shares). More than two stages could also be used. Also, other ways of the determining the offering price for the subsequent stages may be used.

Importantly, all of the particulars of the serially staged offering may be disclosed beforehand (e.g., before commencement of the first offering stage) by the issuer so that investors are apprised of the offering structure. This disclosure includes, for example, (1) the number of stages, (2) the time period between each stage, (3) the number of shares issued at each stage, (4) the offering price or the method of determining the offering price for the first stage, and (5) how the offering price for the subsequent stages will be determined.

According to various implementations, the shares to be offered by the issuing company may be subscribed to by underwriters according to the conventional underwriting model or auctioned to subscribers according to a Dutch auction model or a straight (conventional) auction. Also, a combination of these processes or any future pricing techniques may be used. In addition, the shares may be offered electronically, for example, such as via the Internet.

VI. Issues

There is one issue in this appeal: whether claims 1-26 were properly rejected as being obvious under 35 U.S.C. § 103(a) over Macklin in view of Logue.

VII. Grouping of the Claims

The pending claims of the application fall into two groups. Group I, corresponding to claims 1-19, stand or fall together. Group II, corresponding to claims 20-26, stand or fall together. Reasons why the two claim groups are separately patentable are provided below in Section VIII of this brief.

VIII. Argument

A. The Rejection of Independent Claim 1 For Being Obvious is Improper.

1. The Language of Claim 1

Claim 1 is directed to a method for offering shares of stock of a privately-held company as part of an initial public offering. Specifically, claim 1 states:

> 1. A method for offering shares of stock of a privately-held company to the public as part of an initial public offering, comprising:
>
> offering a first portion of the shares of the stock of the initial public offering to public investors at a first price; and
>
> offering a second portion of the shares of the initial public offering to public investors at a second price after a first trading interval of a first predetermined and predisclosed time period after the offering of the first portion, wherein the first portion of the shares and the second portion of the shares are owned by the privately-held company and wherein a pricing procedure for the second portion of the shares is predisclosed prior to the first offering.

Thus, according to the claim language, the initial public offering occurs in at least two stages – a first offering stage and a second offering stage. Moreover, the second offering stage commences a "first trading interval" after the first stage, and the "first trading interval" is of a "predetermined and predisclosed" length. Further, the claim stipulates that the "pricing procedure" for the second offering stage is "predisclosed prior to" the first offering stage.

The current application discloses a number of different pricing procedures that may be used. For example, the application discloses that the share price for the second offering stage may (i) equal the closing price at the end of the first trading interval (see p. 6, lines 15-18), (ii) be a predetermined price (see p. 9, lines 7-8), or (iii) equal a fraction of the closing price at the end

of the first trading interval (see p. 9, lines 9-12). Claim 1 is not limited to any such pricing procedure.

2. **The Rejection of Claim 1 in the Office Action**

In the Office Action, claim 1 was rejected as being obvious over Macklin in view of Logue. Specifically, the Office Action stated that Macklin "teaches a method for offering stock substantially [*sic*] claimed," but that Macklin "does not expressly show offering a plurality of serial offering stages for the purpose of raising capital and reduce market volatility." Office Action at 2-3. The Office Action then stated that, "It is also well known that in the banking industry that a serial staged IPO is similar to a shelf registration...." *Id.* at 3. The Office Action cites no authority for this contention. Nor could it, as there has never been a serially staged IPO to the best of the Applicant's knowledge. Thus, it is unlikely, and indeed inconceivable, that it would be well known in the investment banking industry that a serially staged IPO could be similar to shelf registrations. In fact, as the Office Action concedes, the Macklin reference, entitled "Going Public and the NASDAQ Market," does not mention serially staged initial public offerings. One would think that such a book, dedicated to the topic of going public, would mention a serially staged IPO if it were so well known.[1] With regard to the Logue reference, the Office Action states, referring to pages A2-4, -5 of Logue:

> Logue shows that the offering of a primary offering, a secondary offering or a plurality of serial offering stages for the purpose of raising capital. It is one of the investment banking industry's most basic activity under underwriting.

Office Action at 4.

[1] In addition to being unsupported, the statement that a serially staged IPO is similar to a shelf registration is inaccurate for reasons stated below in this brief.

While the Office Action is correct that Logue mentions primary and second offerings, Logue uses the term "primary offering" to refer to the "purchase of newly issued securities," and uses the term "secondary offering" to refer to an offering of "a large block of securities that are already owned by a large shareholder." Logue at A2-4, -5. Thus, the "secondary offering" in Logue is not an offering of shares of a privately-held company as part of an initial public offering, but rather it is an offering of shares of a large shareholder of the issuing company. Thus, the "secondary offering" referred to in Logue does not raise capital for the issuing company – it raises funds for the shareholders cashing in their shares. Furthermore, Logue also does not teach or suggest that the secondary offering occurs "a predetermined and predisclosed" trading interval after the first offering.

3. The Cited References, Macklin and Logue, Individually and Collectively, Fail to Teach or Suggest All of the Elements of Claim 1.

One of the *prima facie* elements of a case of obviousness under 35 U.S.C. § 103(a) is that the cited reference, or references when combined (as is the case here), must teach or suggest all of the claim elements. *See* MPEP § 2142. In this case, the cited references, Macklin and Logue, fail to teach or suggest all of the elements of claim 1.

Applicant agrees with the Office that that both Macklin and Logue teach a primary offering (or IPO) where shares of a privately held company are offered to public investors. This is the conventional IPO technique. Macklin and Logue, collectively and individually, however, fail to teach or suggest several limitations of claim 1. Specifically, the combination of Macklin and Logue fails to teach or suggest an IPO offering structure having two serial stages, where the second stage commences a "first trading interval" after the first stage, and where the "first trading interval" is of a "predetermined and predisclosed" length. Also, the combination of

Macklin and Logue fails to teach or suggest the claim limitation that the "pricing procedure" for the second offering stage is "predisclosed prior to" the first offering stage

The Office Action relies on a single sentence from the Macklin reference as teaching these features of claim 1. The sentence of Macklin relied upon by the Office reads as follows:

> As the stock prices appreciate due to improving market conditions or as the company builds credibility with investors, the company can structure a larger follow-on offering at a higher valuation.

See Office Action at 3 (citing Macklin at 103).

This sentence (or any other portion of Macklin) fails to teach or suggest all of the limitations of claim 1, including the following:

- ***First***, the follow-on offering discussed in Macklin is not part of an initial public offering, as required by claim 1. Rather, it is a second offering after the company has already become public. Indeed, the cited sentence talks about "structuring" the follow-on offering once the IPO has been completed. *See* Macklin at 103. In addition, in the example given in the Macklin reference, Macklin states that Octel Communications Corporation "*completed* the first technology IPO" and then subsequently "completed a follow-on offering." *Id.* (emphasis added). In other words, Macklin makes clear that the so-called follow-on offering is performed after the IPO is *completed.* Thus, Applicant submits it is clear from the Macklin reference that the follow-on offering referred to in Macklin is not part of an IPO.

- ***Second***, even assuming that the follow-on offering in Macklin constitutes the second offering in claim 1 (an assumption to which the Applicant does not agree, as stated above), Macklin does not disclose that the second offering occurs a

predetermined and predisclosed time period (i.e., the "first trading interval") after the first offering, as recited in claim 1. Indeed, Macklin gives no indication, and therefore fails to teach or suggest, that potential investors are apprised of the timing of the follow-on offering prior to the initial offering. The timing feature is simply not discussed in Macklin.

- ***Third***, even assuming again that the follow-on offering in Macklin constitutes the second offering in claim 1, the Macklin reference does not disclose that a pricing procedure for the second offering is disclosed prior to the initial offering, as recited in claim 1. Macklin is simply silent on this feature.

Moreover, Applicant notes that the Office Action does not identify any portion of the Macklin reference as teaching or suggesting these features of claim 1.

Further, the Logue reference is of no aid to the Office in making out a *prima facie* case of obviousness because Logue fails to teach or suggest these same three features of claim 1. As mentioned above, the "secondary offering" disclosed in Logue constitutes shares owned by a large shareholder, not shares owned by the issuing company. Moreover, like Macklin, Logue does not disclose or suggest that the secondary offering occurs "a predetermined and predisclosed" time period after the first offering stage. Also like Macklin, Logue fails to teach or suggest that the pricing procedure for the second offering is disclosed prior to the initial offering. Logue too is silent with respect to these limitations of claim 1.

Nor does the Office identify any portion of the Logue reference that discloses these features of claim 1. Rather, the Office Action merely states the Logue reference "shows that the offering of a primary offering, a secondary or a plurality of serial offering stages for the purpose of raising capital [*sic*]." The fact that a second offering "is one of the investment banking's most

basic activity under underwriting," is immaterial to the patentability of claim 1 because such a secondary offering, as mentioned before, (i) is not part of an initial public offering, (ii) does not occur a predetermined and predisclosed time period after the first offering, and (iii) the pricing procedure for the second offering is not disclosed prior to the initial offering.

Therefore, Applicant submits that the combination of Macklin and Logue fails to teach or suggest every element of claim 1. For at least this reason, the Office has failed to establish a *prima facie* case of obviousness under 35 U.S.C. § 103(a) with respect to claim 1. Accordingly, Applicant submits that the rejection of claim 1 (as well as claims 2-19) be reversed by the Board.

4. A Serially Staged IPO is not Similar to a Shelf Registration.

Applicant submits that the statement in the Office Action that a serially staged IPO is similar to a shelf registration is inaccurate. Shelf registration was permitted by the SEC in 1982 to reduce the transaction costs and delays of securities offerings by large companies that periodically and regularly offer securities. The sale of securities (mostly bonds) by this method is no different from follow-on offerings commonly made by public companies, except that after the disclosure required to put the securities "on the shelf," no additional disclosure filing needs be made for those securities at the time of actual sale, and the costs of underwriting may be reduced.

Currently, a shelf registration can only be made by a company which is *already public*, and which has outstanding publicly held securities of at least $150 Million, and which makes quarterly and other required on-going disclosures of material events and finances to the SEC. It is these quarterly filings that constitute the ongoing disclosure about the company necessary to offer the securities (apart from the initial disclosure about the securities themselves which is necessary to put them on the shelf). In essence, because of these on-going filings, it is deemed that the company has already made disclosure and the only thing the company must do to sell

securities is to adequately describe them (e.g., preferred stock of a certain kind, or debt of a certain priority and covenants) – and so put them on the shelf. When the company decides to "take down" securities from the shelf and sell them, the company only needs to price them and find buyers (technically, it prices and finds buyers in advance of an actual "take down" or sale), and not go through any further steps and delays with the SEC. Under current rules, securities can stay on the shelf for only two years.

Thus, shelf registration is just a streamlined way of making regular offerings by existing large companies that are already public. No such mechanism exists for IPO stock (whereby a company actually becomes public). In that connection, shelf registrations differ from the claimed invention in that shelf registrations do not involve the offering of shares of privately held companies *as part of an IPO*. Rather, shelf registrations are only available for publicly held companies. Also, the sale of "on-the-shelf" shares can occur at any time whereas, according to claim 1, the second stage occurs a "predetermined and predisclosed" time period after the first stage. Finally, shelf registrations are different from the claimed invention because the pricing procedures for the subsequent offerings are not "predetermined and predisclosed" prior to the first stage.

To demonstrate the difference between shelf registration and claim 1, it should be recognized that the method of claim 1 may be used by a company doing an IPO and thereafter the company may take down shares from the shelf as part of a shelf registration offering. That is, the initial offering may be performed pursuant to the method of claim 1 and the subsequent shelf registration offerings, with the company already public, may be done pursuant to the conventional shelf registration technique. The shares taken down from the shelf, however, are not part of claim 1 because, as mentioned previously, (i) they are offered by an already public

company (the offering stages of the IPO in claim 1 having been completed), (ii) the off-the-shelf shares are not offered a "predetermined and predisclosed" time period later, and (iii) the pricing procedure for the off-the-shelf shares is not predetermined and predisclosed prior to the first stage.

B. The Rejection of Claim 20 For Being Obvious is Improper.

1. Claim 20 is Separately Patentable from Claim 1.

Claim 20 depends from claim 1 and recites:

> 20. The method of claim 1, further comprising, prior to offering the first portion of the shares:
>
> auctioning shares of the stock to at least one potential subscriber; and
>
> awarding an allotment of the shares to the potential subscriber at a first share price dependent upon a bid price of the potential subscriber during the auctioning for a quantity of the shares.

Because the combination of steps recited in claim 20 (including the steps recited in base claim 1) are not taught or suggested in the cited references, claim 20 (as well as claims 21-26 depending therefrom) are separately patentable from claim 1 (and claims 2-19).

2. The Rejection of Claim 20

In the Office Action, claim 20 was rejected for the same reason as claim 1, namely for being obvious under 35 U.S.C. § 103(a) in view of Macklin and Logue. No separate reasoning was provided in the Office Action with respect to claim 20.

3. The Cited References, Macklin and Logue, Individually and Collectively, Fail to Teach or Suggest All of the Elements of Claim 20.

Because claim 20 depends from claim 1, claim 20 inherently includes all of the limitations of claim 1. Therefore, claim 20 is not obvious in view of Macklin and Logue for the

reasons set forth above with respect to claim 1. Claim 20, however, is nonovbious over the cited references for an additional reason. Specifically, neither Macklin nor Logue teach or suggest the limitations of claim 20, i.e., "auctioning shares of the stock to at least one potential subscriber" and "awarding an allotment of the shares to the potential subscriber at a first share price dependent upon a bid price of the potential subscriber during the auctioning for a quantity of the shares." The Office Action does not disclose where Macklin or Logue suggest these limitations. In fact, the Office Action does not even address the limitations of claim 20.

For at least this additional reason, Applicant submits that the combination of Macklin and Logue fails to teach or suggest every element of claim 20. As a result, the Office has failed to establish a *prima facie* case of obviousness with respect to claim 20. Accordingly, Applicant submits that rejection of claim 20 (as well as claims 21-26 depending therefrom) be reversed by the Board.

IX. Conclusion

For the foregoing reasons, Applicant submits that the rejections of claims 1-26 in the Office Action are improper and should be reversed.

Respectfully submitted,

Date: May 27, 2004

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APPENDIX - CLAIMS ON APPEAL

1. A method for offering shares of stock of a privately-held company to the public as part of an initial public offering, comprising:

offering a first portion of the shares of the stock of the initial public offering to public investors at a first price; and

offering a second portion of the shares of the initial public offering to public investors at a second price after a first trading interval of a first predetermined and predisclosed time period after the offering of the first portion, wherein the first portion of the shares and the second portion of the shares are owned by the privately-held company and wherein a pricing procedure for the second portion of the shares is predisclosed prior to the first offering.

2. The method of claim 1, wherein offering the second portion of the shares includes offering the second portion of the shares at a second price equal to the first price.

3. The method of claim 1, wherein offering the second portion of the shares includes offering a second portion of the shares equal in number to the first portion of the shares.

4. The method of claim 1, wherein offering the second portion of the shares includes offering the second portion after a first trading interval of at least one hour after the offering of the first portion.

5. The method of claim 4, wherein offering the second portion of the shares includes offering the second portion of the shares after a first trading interval of at least one day after the offering of the first portion.

6. The method of claim 1, wherein offering the second portion of the shares includes offering the second portion of the shares at a second price equal to a closing price of the first portion of the shares at an end of the first trading interval.

7. The method of claim 1, wherein offering the first portion of shares of the stock at a first price includes offering the first portion of the shares to a public investor via a computer network.

8. The method of claim 1, wherein offering the second portion of the shares at a second price includes offering the second portion of the shares to a public investor via a computer network.

9. The method of claim 1, further comprising offering a third portion of the shares at a third price after a second trading interval of a second predetermined time period after the offering of the second portion of the shares.

10. The method of claim 9, wherein offering the third portion of the shares includes offering the third portion of the shares after a second trading interval of a second predetermined time period equal in length to the first predetermined time period.

11. The method of claim 9, wherein offering the third portion of the shares includes offering the third portion of the shares at a third price equal to a closing price of the first and second portions of the shares at an end of the second trading interval.

12. The method of claim 9, wherein offering the third portion of the shares includes offering a third portion of the shares equal in number to the second portion of the shares.

13. The method of claim 12, wherein offering a third portion of the shares equal in number to the second portion of the shares includes offering a third portion of the shares equal in number to the first portion of the shares.

14. The method of claim 9, wherein offering the third portion of the shares includes offering the third portion of the shares to a public investor via a computer network.

15. A method for offering shares of stock of a privately-held company to the public as part of an initial public offering, comprising:

offering a plurality of portions of the shares of the stock of the initial public offering to public investors over a plurality of serial offering stages, such that the offering stages are separated by at least one trading interval of a predetermined and predisclosed time period; and

trading at least one portion of the shares during the at least one trading interval, wherein the plurality of portions of the shares are owned by the privately-held company and wherein a pricing procedure for the portions of the shares offered in the offering stages subsequent to the

first offering stage is predisclosed prior to offering a first of the plurality of portions in the first offering stage.

16. The method of claim 15, wherein offering a plurality of portions of shares includes offering a plurality of equal portions of the shares over the plurality of serial offering stages.

17. The method of claim 15, wherein offering a plurality of portions of shares includes:

offering a first portion of the shares at a first price; and

offering a second portion of the shares at a second price after a first trading interval of a first predetermined time period after the offering of the first portion of the shares, wherein the second price is equal to a closing price of the first portion of the shares at an end of the first trading interval.

18. The method of claim 17, wherein offering a plurality of portions of shares further includes offering a third portion of the shares at a third price after a second trading interval of a second predetermined time period after offering of the second portion of the shares, wherein the third price is equal to a closing price of the first and second portions of the shares at an end of the second trading interval.

19. The method of claim 15, wherein offering a plurality of portions of shares of the stock over a plurality of serial offering stages includes offering at least one of the plurality of portions of shares to a public investor via a computer network.

20. The method of claim 1, further comprising, prior to offering the first portion of the shares:

auctioning shares of the stock to at least one potential subscriber; and

awarding an allotment of the shares to the potential subscriber at a first share price dependent upon a bid price of the potential subscriber during the auctioning for a quantity of the shares.

21. The method of claim 20, wherein awarding the allotment of the shares to the potential subscriber at a share price dependent upon a bid price of the potential subscriber includes awarding the allotment of the shares to the potential subscriber at a share price equal to the bid price of the potential subscriber for the quantity of the shares.

22. The method of claim 20, wherein:

auctioning shares to be publicly offered to at least one potential subscriber includes auctioning the shares to be publicly offered to a plurality of potential subscribers; and

awarding an allotment of the shares includes awarding an allotment of the shares to certain of the plurality of potential subscribers based on the auctioning.

23. The method of claim 22, wherein auctioning the shares to the plurality of potential subscribers includes auctioning the shares to the plurality of potential subscribers via a computer network.

24. The method of claim 22, wherein awarding an allotment of the shares to certain of the plurality of potential subscribers includes awarding all of the shares to be publicly offered to one of the plurality of potential subscribers.

25. The method of claim 22, wherein awarding an allotment of the shares to certain of the plurality of potential subscribers includes:

awarding a first allotment of the shares to a first potential subscriber at a share price dependent upon a bid price of the first potential subscriber for a first amount of the shares; and

awarding a second allotment of the shares to a second potential subscriber at a share price dependent upon a bid price of the second potential subscriber for a second amount of the shares.

26. The method of claim 22, wherein awarding an allotment of the shares to certain of the plurality of potential subscribers includes awarding an allotment of the shares to certain of the plurality of potential subscribers at a share price equal a lowest bid price among the potential subscribers at which all the shares to be publicly offered are subscribed to.

Attorney Docket No. 99629
Serial No. 09/491,388

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